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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,656	01/15/2004	Marjorie Mossman Peffly	9144	5879
27752	7590	05/03/2005	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			BOYER, CHARLES I	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/758,656

Applicant(s)

PEFFLY ET AL

Examiner

Charles I. Boyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10, 23 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 10 and 23 contain both chlorides and halides in the Markush group. Claim 28 is a dependent claim, but does not say which claim it depends from.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Heinz et al, US 5,409,628.

Heinz et al teach a hair shampoo comprising 8.25% lauryl ether sulfate (which results in an ethoxylate level of about 2 and a sulfate level of about 2, both of which values are well within the ranges presently claimed), 0.5% polyquaternium-10, 1.5% sodium chloride, 1.5% betaine, and the balance water (col. 5, example 4). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

5. Claims 1-6, 8-11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel et al, US 5,726,137.

Patel et al teach a hair conditioning shampoo comprising 4.5% decyl ether sulfate (which results in an ethoxylate level of about 2 and a sulfate level of about 1.5, both of which values are well within the ranges presently claimed), 0.6% polyquaternium-10, 0.2% sodium phosphate, 9% betaine, 4% dimethicone/polydimethylsiloxane, and the balance water (col. 15, example 5-4). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

6. Claims 1-6, 8-19, and 21-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Wire et al, US 6,524,563.

Wire et al teach a hair treatment composition comprising 4% lauryl ether sulfate (which results in an ethoxylate level of about 1 and a sulfate level of about 1, both of which values are well within the ranges presently claimed), 0.3% polyquaternium-10,

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2% sodium chloride, 4% betaine, 0.4% polydimethylsiloxane having a particle size of 35 nm, 0.3% silica particles having a particle size of 7 to 40 nm, and the balance water (col. 18, example 3D). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

7. Claims 1-11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Marschner et al, US 5,045,307.

Marschner et al teach a hair treatment composition comprising 8.88% lauryl ether sulfate (which results in an ethoxylate level of about 2 and a sulfate level of about 2, both of which values are well within the ranges presently claimed), 0.3% polyquaternium-10, 1% sodium chloride, 1.3% betaine, and the balance water (col. 5, table IV). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wire et al, US 6,524,563.


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Wire et al are relied upon as set forth above. Preferred amounts of lauryl ether sulfate are 12 and 14% (col. 18, examples 3B and 3C). It would have been obvious to one of ordinary skill in the art to use greater amounts of lauryl ether sulfate and so satisfy the limitations of claims 7 and 20 as such amounts are taught as preferred by Wire et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-F 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571 272 1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Charles I Boyer  
Primary Examiner  
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